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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

JEANNINE KAISER,

Plaintiff and Appellant,

v.

SPORTS CAR RACING ASSOCIATION  
OF THE MONTEREY PENINSULA,

Defendant and Respondent.

H040850

(Monterey County  
Super. Ct. M112190)

Plaintiff Jeannine Kaiser appeals from a summary judgment granted in favor of defendant Sports Car Racing Association of the Monterey Peninsula (SCRAMP) on her second amended complaint for general negligence. (Code Civ. Proc., § 437c.) We will affirm the judgment

*Background*<sup>1</sup>

On Sunday, July 25, 2010, on Reservation Road, plaintiff's husband, Keith Kaiser, died as a result of a motorcycle accident. Kaiser, along with several friends, was among thousands of motorcycle enthusiasts who spent the day at the Red Bull Moto GP races (the event) at Mazda Laguna Seca Raceway (the Raceway) on Highway 68 in an unincorporated area of Monterey County. At the conclusion of the event, Kaiser and his friends left the Raceway and were traveling on their own motorcycles heading westbound along Reservation Road when Timothy Paul Andre, who was riding a Yamaha

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<sup>1</sup> In general, the facts behind the tragic motorcycle accident that underlies plaintiff's wrongful death action are undisputed.

motorcycle, attempted to perform a U-turn as he was heading eastbound on Reservation Road. Andre turned his motorcycle directly into the path of a Ducati motorcycle ridden by David Encarnacion Jimenez, who was also traveling eastbound on Reservation Road. Jimenez's Ducati struck the Yamaha, causing Andre to be knocked onto the roadway. The impact between the two motorcycles pushed the Ducati into the westbound lanes of Reservation Road where Jimenez was knocked from the Ducati. The Ducati slid across the westbound lane and collided with Kaiser and his BMW motorcycle. Kaiser was knocked from his motorcycle. The BMW motorcycle overturned and struck the ground several times before coming to rest in a field. Kaiser was pronounced dead of traumatic injuries at approximately 4:42 p.m. The location of the accident was 0.34 miles east of the Watkins Gate intersection with Reservation Road.

Plaintiff filed a wrongful death action against SCRAM, among others,<sup>2</sup> alleging negligence on the theory that under its traffic control plan for the event, SCRAM “improperly required all motorcyclists who exited from the Watkins [Gate] exit of the Mazda Laguna Seca Raceway to proceed exclusively onto eastbound Reservation Road when it was well known and understood to the designers and implementers of this traffic control plan that the primary traffic flow out of the Watkins [Gate] exit would be westbound toward the San Jose and San Francisco Bay areas. This resulted in a substantial volume of motorcycle traffic having to make a “U-turn” from east to westbound Reservation Road in front of a blind curve that existed on Reservation Road that rendered it impossible for eastbound motorcyclists to observe and react to the traffic flow in the opposite direction.”

Plaintiff alleged that at the time of the accident, SCRAM “so negligently, carelessly, recklessly, wantonly, and unlawfully owned, operated, controlled supervised,

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<sup>2</sup> In addition, plaintiff sued the State of California through its agency the California Highway Patrol (CHP) for negligent undertaking and Andre and Jimenez for general negligence.

maintained and/or occupied the Mazda Laguna Seca Raceway and execute[d] an effective traffic control plan that would safely direct and manage the motorcycle traffic exiting the Wa[t]kins [Gate] exit of the Mazda Laguna Seca Raceway . . . as to directly and proximately cause and contribute to the death of the decedent, Plaintiff's husband Keith Howard Kaiser."

SCRAMP moved for summary judgment. Attached to the motion for summary judgment were several exhibits that showed the location of the Raceway and the roads leading away from it,<sup>3</sup> a copy of the traffic control plan for the event, and a declaration from former CHP Officer W. Faulk authenticating the CHP's transmittal letter and the Reimbursable Services Agreement (the agreement) for the event. The letter indicates that under the agreement the CHP would provide traffic control for the event at, among other places, Watkins Gate. Faulk attested to the following facts: He worked for the CHP until his retirement in 2012. From 2005 he was the primary liaison for the CHP for events at the Laguna Seca Raceway; and since that time he had overseen and coordinated "extraordinary traffic control" requirements on the roadways surrounding the Raceway. He was the coordinator for the CHP for the traffic control services provided by the CHP for the event. The CHP performed traffic control at the event at various locations, which involved controlling and stopping traffic on the main roads, including State Route 68 and Reservation Road, so that traffic could go into and out of the Laguna Seca area.

At the hearing on the summary judgment motion, plaintiff's counsel argued that SCRAMP controlled Reservation Road and the roadways surrounding the event and had the ability to put signs on Reservation Road to direct the traffic to slow down and detour so they could go westbound on Reservation Road. Plaintiff's counsel asserted that SCRAMP forced thousands of motorcycle riders to make a right turn out of Watkins Gate

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<sup>3</sup> The exhibits show that the location of the accident was several miles away from the Raceway.

onto Reservation Road, without giving them any idea how they could get back to Highway 1.

SCRAMP argued that a traffic operations plan had been prepared, and was approved by all the required government agencies and that the CHP carried out the CHP portion of the plan, which included the determination to let traffic turn only right onto Reservation road. SCRAMP denied that it had any control over the traffic on Reservation Road as it was a county road and the accident was caused by a “crazy U-turn” by Andre.

The court agreed with SCRAMP; the court found that there was no evidence that people misunderstood how to get back to Highway 1 and that the accident was caused by Andre; and SCRAMP had no duty to do anything more than it did. Accordingly, the court granted the summary judgment motion.

On appeal, in essence, plaintiff argues that SCRAMP exercised control over Reservation Road and the lack of signs directing motorcycle riders how to get back to the highways from which they entered the event, and directing them not to make U-turns on Reservation Road and to reduce speed, created a dangerous situation. Thus, plaintiff argues, this accident was foreseeable. We are not persuaded.

#### *Discussion*

We begin by summarizing several principles that govern the grant and review of summary judgment motions under section 437c of the Code of Civil Procedure.

“A defendant’s motion for summary judgment should be granted if no triable issue exists as to any material fact and the defendant is entitled to a judgment as a matter of law. [Citation.] The burden of persuasion remains with the party moving for summary judgment. [Citation.]” (*Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1002-1003 (*Kahn*); Code Civ. Proc., § 437c, subd. (c).) Thus, a defendant moving for summary judgment “bears the burden of persuasion that ‘one or more elements of’ the ‘cause of action’ in question ‘cannot be established,’ or that ‘there is a complete defense’

thereto. [Citation.]” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*); Code Civ. Proc., § 437c, subd. (o)(2).) In addition, such a defendant “bears the initial burden of production to make a prima facie showing that no triable issue of material fact exists. Once the initial burden of production is met, the burden shifts to the responding party [here plaintiff] to demonstrate the existence of a triable issue of material fact.” (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1250, citing *Aguilar, supra*, 25 Cal.4th at pp. 850-851.) However, “[t]he pleadings delimit the issues to be considered on a motion for summary judgment” (*Turner v. State of California* (1991) 232 Cal.App.3d 883, 891), and “the plaintiff cannot bring up new, unpleaded issues in his or her opposing papers.” (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98-99, fn. 4.)

On appeal from the entry of summary judgment, “[w]e review the record and the determination of the trial court de novo.” (*Kahn, supra*, 31 Cal.4th at p. 1003.) Further, in determining whether there exists any triable issues of material fact, we strictly construe the moving party’s evidence and liberally construe the opposing party’s evidence. (*Levinson v. Owens* (2009) 176 Cal.App.4th 1534, 1543.) Thus, we independently review whether a triable issue of material fact exists and whether the moving party is entitled to summary judgment as a matter of law. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.) A triable issue of fact exists when the evidence reasonably would permit the trier of fact, under the applicable standard of proof, to find the purportedly contested fact in favor of the party opposing the motion. (*Aguilar, supra*, 25 Cal.4th at p. 850.)

At the outset, we set forth the elements of a negligence cause of action: “(1) the defendant’s legal duty of care towards the plaintiff, (2) the defendant’s breach of that duty, (3) injury to the plaintiff as a proximate result of the breach, and (4) damage to the plaintiff. [Citation.]” (*Jones v. Grewe* (1987) 189 Cal.App.3d 950, 954.)

The trial court granted summary judgment in favor of SCRAM on the ground that SCRAM owed no duty of care to Kaiser. Plaintiff contends that the trial court erred in granting summary judgment because she successfully raised a triable issue of fact, whether SCRAM exercised control over Reservation Road.

The existence of a duty of care is an essential element of plaintiff's cause of action for negligence. It has long been held that without a duty of care owed by the alleged wrongdoer to the person injured, or to a class of which he is a member, no negligence can be found. (*Richards v. Stanley* (1954) 43 Cal.2d 60, 63 [it is an elementary principle that an indispensable factor of liability founded upon negligence is the existence of a duty of care owed by the alleged wrongdoer to the person injured, or to a class of which he is a member].) The determination that a defendant owed the plaintiff no duty of care is a complete defense to a cause of action for negligence. (*Sprecher v. Adamson Companies* (1981) 30 Cal.3d 358, 362.)

Determining the existence of a legal duty to use reasonable care under a particular set of facts is a question of law for the trial court to decide. (*Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal.App.4th 1133, 1139.) In this case, the only issue before us is whether SCRAM had a legal duty to protect Kaiser from injury on Reservation Road.

The state has preempted the field of traffic control. (Veh.Code, § 21; *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 550 (*Rumford*).) Vehicle Code section 21 provides: "Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and a local authority shall enact or enforce any ordinance on the matters covered by this code, including ordinances or resolutions that establish regulations or procedures for, or assess a fine, penalty, assessment, or fee for a violation of, matters covered by this code, unless expressly authorized by this code." As stated in *Rumford*, "The streets of a city belong to the people of the state, and every citizen of the state has a right to the use thereof, subject to legislative control . . . . The right of control over street traffic is an

exercise of a part of the sovereign power of the state . . . .’ [Citation.] ‘ “The use of the highways for purposes of travel and transportation is not a mere privilege, but a common and fundamental right, of which the public and individuals cannot rightfully be deprived . . . [A]ll persons have an equal right to use them for purposes of travel by proper means, and with due regard for the corresponding rights of others.” ’ [Citations.]” (*Rumford, supra*, at pp. 549-550.) “Thus, unless ‘expressly provided’ by the Legislature, a city has no authority over vehicular traffic control.” (*Id.* at p. 550.) Moreover, the statutory authority to prescribe traffic rules is strictly construed. (*Ibid.*; *City of Poway v. City of San Diego* (1991) 229 Cal.App.3d 847, 858, 864; *People v. Moore* (1964) 229 Cal.App.2d 221, 228.)

If a city has no authority over traffic control unless expressly provided by the Legislature, it is quite apparent that SCRAMPS had no control over Reservation Road or motorcyclists, such as Andre, using it. “The power to control public streets and regulate traffic lies with the state which may delegate local authority to municipalities [citations] and only the state (Veh. Code, § 21352) or local authorities, when authorized (Veh. Code, § 21353), may erect traffic signs or signals, all other persons being forbidden to do so (Veh. Code, § 21465) with some few exceptions (Veh. Code, §§ 21400, 21468).”<sup>4</sup> (*Nevarez v. Thriftmart, Inc.* (1970) 7 Cal.App.3d 799, 805 [no duty to post a sign to regulate traffic conditions on adjacent public roads].)

“[C]ourts . . . have consistently refused to recognize a duty to persons injured in adjacent streets or parking lots over which the defendant does not have the right of

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<sup>4</sup> The signs referred to in Vehicle Code section 21400 are those placed by persons actually engaged in highway construction or improvement. (*A. Teichert & Son, Inc. v. Superior Court* (1986) 179 Cal.App.3d 657, 664); and Vehicle Code section 21468 grants the Public Utilities commission the authority “to erect or maintain, or cause to be erected and maintained, signs, signals or other traffic control devices as authorized by law.”

possession, management and control. [Citations.]” (*Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 386 (*Owens*).)

In analogous circumstances in which businesses or residential complexes are alleged to have a duty of care to reduce the risk that their patrons or residents will use busy or even dangerous adjacent streets and roadways, courts have not found a duty in the absence of affirmative hazards that exposed people to greater hazards in the street. (See *Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 846-848 [signs or landscaping that obstruct the view of a roadway]; *Barnes v. Black* (1999) 71 Cal.App.4th 1473, 1476, 1479 [steep driveway where children rode bicycles on the property leading to the street].)

In *Seaber v. Hotel Del Coronado* (1991) 1 Cal.App.4th 481, for example, the court found that a hotel did not have a duty of care to a pedestrian killed in a public crosswalk after leaving the hotel, even though the crosswalk was installed by the city at the hotel’s request, the hotel knew that there were dangers in using the crosswalk, and the hotel failed to post signs warning its patrons of such dangers. (*Id.* at pp. 490-493; *Owens, supra*, 198 Cal.App.3d at pp. 382, 387-388 [market owed no duty of care to customer who double-parked his car in the street despite allegations that market encouraged, solicited, and invited persons to do so to purchase goods at the market]; *Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1624 [apartment owner had no duty to erect fence to protect children from walking into street adjacent to apartment].)

Plaintiff’s allegations that SCRAM should have erected signs and directed traffic to slow down and not to make U-turns on Reservation Road are not sufficiently distinguishable from the circumstances in cases such as those above where landowners were held not to have a duty to guard against the known hazards of using adjacent



roadways even if they encouraged use of the roadways or had businesses that attracted such use. (Cf. *Nevarez*, *supra*, 7 Cal.App.3d at p. 806.)<sup>5</sup>

In conclusion, we find that plaintiff failed to raise any triable issue of material fact as to her negligence cause of action against SCRAMP because, as the trial court found, SCRAMP had “no duty to do anything more than they [*sic*] did.” Simply put, SCRAMP had not only no duty to regulate traffic on a public roadway, but no *ability* to do so either. (See *City of El Segundo v. Bright* (1990) 219 Cal.App.3d 1372 and cases and statutes cited therein [landowners prohibited from altering public roadways].)<sup>6</sup>

#### *Disposition*

The judgment is affirmed. Defendants are awarded their costs on appeal.

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<sup>5</sup> We note that in *McGarvey v. Pacific Gas & Elec. Co.* (1971) 18 Cal.App.3d 555, an employee of Pacific, while making a U-turn next to the Pacific plant, struck plaintiff, a motorcyclist. Plaintiff alleged that Pacific failed to provide parking space to accommodate all the cars of its employees, and that it encouraged employees to park on the street and knew that its employees made U-turns and created traffic congestion. The *McGarvey* court rejected plaintiff’s argument that Pacific owed him a duty of care. The court pointed out that a characteristic of modern life is inadequate parking and traffic jams. (*Id.* at p. 562.) However, the *McGarvey* court acknowledged that “[c]ircumstances can be conceived where an occupier of land could . . . unleash forces onto public streets the nature of which would require a court to say that injury to third persons was foreseeable and that a duty of care existed and was breached.” (*Ibid.*) The case before us is not such a case.

<sup>6</sup> In her second amended complaint, plaintiff recognized that it was the CHP that was in control of the roadway where Kaiser was killed. Specifically, plaintiff alleged that “Reservation Road where decedent was killed, was at all relevant times herein, owned, operated, controlled, supervised, maintained, and/or occupied by defendants STATE OF CALIFORNIA through its agencies CALIFORNIA HIGHWAY PATROL . . . . [¶] The traffic on Reservation Road where decedent was killed, was at all relevant times, herein, controlled, patrolled, directed and planned by defendants CHP . . . .” These allegations were incorporated by reference into plaintiff’s negligence cause of action against SCRAMP and others.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.